

1 Under the detention statute, 18 U.S.C. § 3142, a judicial officer must find “by clear and
2 convincing evidence that the person is not likely to flee or pose a danger to the safety of any other
3 person or the community” before ordering the release. In the original detention order, the magistrate
4 judge held that he “cannot find by clear and convincing evidence that the defendant is not a risk of
5 flight and not a danger to the community.” (Doc. #123).

6 After an independent review of the evidence, the court agrees with the magistrate judge that
7 it is unable to find, by clear and convincing evidence, that defendant is not a danger to the community
8 or a risk of flight.

9 Alternatively, defendant asserts his right to a preliminary hearing pursuant to Federal Rules
10 of Criminal Procedure 32.1(b)(1)(A). Rule 32.1(b)(1)(A) assigns the preliminary hearing to a
11 magistrate judge.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Kenyon Devers’
14 motion to appeal the magistrate’s detention order (doc. #125) be, and the same hereby is, DENIED.

15 IT IS FURTHER ORDERED that defendant Kenyon Devers’ motion for preliminary hearing
16 (doc. #125) be, and the same hereby is, referred to Magistrate Judge Foley.

17 DATED January 17, 2012.

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20 UNITED STATES DISTRICT JUDGE
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